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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation
Against:

13 MARIE GORDON
3203 N. Marengo Ave.
Altadena, CA 91001

14 Registered Nursing License No. 528270

15 Respondent.
16

Case No. 2003-304

**PETITION TO REVOKE
PROBATION**

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Petition to
20 Revoke Probation solely in her official capacity as the Executive Officer of the Board of
21 Registered Nursing, Department of Consumer Affairs.

22 2. On or about December 5, 1996, the Board of Registered Nursing (Board)
23 issued Registered Nursing License No. 528270 to Marie Gordon (Respondent). The Registered
24 Nursing License expired on April 30, 2008, and has not been renewed.

25 3. In a disciplinary action entitled "In the Matter of the Accusation Against
26 Marie Gordon," Case No. 2003-304, the Board issued a Decision, effective October 22, 2004, in
27 which Respondent's Registered Nursing License was revoked. However, the revocation was
28 stayed and Respondent's license was placed on probation for a period of five (5) years with

1 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated
2 by reference.

3 JURISDICTION

4 4. This Petition to Revoke Probation is brought before the Board under the
5 authority of the following laws. All section references are to the Business and Professions Code
6 (Code) unless otherwise indicated.

7 STATUTORY PROVISIONS

8 5. Section 2750 provides, in relevant part, that the Board may discipline any
9 licensee, including a licensee holding a temporary or an inactive license, for any reason provided
10 in Article 3 (commencing with section 2750) of the Nursing Practice Act.

11 6. Section 2764 provides, in relevant part, that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
13 licensee or to render a decision imposing discipline on the license.

14 FIRST CAUSE TO REVOKE PROBATION

15 **(Failure to Comply with the Board's Probation Program)**

16 7. At all times after the effective date of Respondent's probation, Probation
17 Condition No. 2 stated:

18 "Respondent shall fully comply with the conditions of the Probation Program
19 established by the Board and cooperate with representatives of the Board in its monitoring and
20 investigation of the Respondent's compliance with the Board's Probation Program. Respondent
21 shall inform the Board in writing within no more than 15 days of any address change and shall at
22 all times maintain an active, current license status with the Board, including during any period of
23 suspension."

24 8. Respondent's probation is subject to revocation because she failed to
25 comply with Probation Condition No. 2, referenced above, in that she failed to comply with the
26 Board's Probation Program. Respondent failed to renew her nursing license and allowed it to
27 expire on April 30, 2008. Additionally, Respondent failed to fully comply with the terms and
28 conditions of her probation by failing to comply with conditions as stated herein.

1 **SECOND CAUSE TO REVOKE PROBATION**

2 **(Failure to Report in Person)**

3 9. At all times after the effective date of Respondent's probation, Probation
4 Condition No. 3 stated:

5 "Respondent, during the period of probation, shall appear in person at
6 interviews/meetings as directed by the Board or its designated representatives."

7 10. Respondent's probation is subject to revocation because she failed to
8 comply with Probation Condition No. 3, referenced above, in that she failed to report in person.
9 Respondent failed to appear in person as directed by the Board for follow-up meetings on May 8,
10 2008 and June 18, 2008.

11 **THIRD CAUSE TO REVOKE PROBATION**

12 **(Failure to Submit Written Reports)**

13 11. At all times after the effective date of Respondent's probation, Probation
14 Condition No. 5 stated:

15 "Respondent, during the period of probation, shall submit or cause to be
16 submitted such written reports/declarations and verifications of actions under penalty of perjury,
17 as required by the Board. These reports/declarations shall contain statements relative to
18 Respondent's compliance with all the conditions of the Board's Probation Program. Respondent
19 shall immediately execute all release of information forms as may be required by the Board or its
20 representatives.

21 "Respondent shall provide a copy of this Decision to the nursing regulatory
22 agency in every state and territory in which she has a registered nursing license."

23 12. Respondent's probation is subject to revocation because she failed to
24 comply with Probation Condition No. 5, referenced above, in that she failed to submit Written
25 Reports. Respondent failed to submit her Quarterly Reports for the following quarters:

<u>Quarters</u>	<u>Due Dates</u>
January - March 2007	April 7, 2007
April - June 2007	July 7, 2007

1 July - September 2007 October 7, 2007
2 January - March 2008 April 7, 2008
3 April - June 2008 July 7, 2008

4 Additionally, Respondent failed to submit her On-Going Treatment form for
5 January - March 2008 and April - June 2008 from Dr. Clifford Feldman that were due with her
6 Quarterly Reports.

7 **FOURTH CAUSE TO REVOKE PROBATION**
8 **(Failure to Function as a Registered Nurse)**

9 13. At all times after the effective date of Respondent's probation, Probation
10 Condition No. 6 stated:

11 "Respondent, during the period of probation, shall engage in the practice of
12 registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or
13 as determined by the Board.

14 "For purposes of compliance with the section, "engage in the practice of
15 registered nursing" may include, when approved by the Board, volunteer work as a registered
16 nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

17 "The Board may require that advanced practice nurses engage in advanced
18 practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined
19 by the Board.

20 "If Respondent has not complied with this condition during the probationary term,
21 and the Respondent has presented sufficient documentation of her good faith efforts to comply
22 with this condition, and if no other conditions have been violated, the Board, in its discretion,
23 may grant an extension of the Respondent's probation period up to one year without further
24 hearing in order to comply with this condition. During the one year extension, all original
25 conditions of probation shall apply."

26 14. Respondent's probation is subject to revocation because she failed to
27 comply with Probation Condition No. 6, referenced above, in that she failed to function as a
28 registered nurse. Respondent failed to/is unable to work in her licensed capacity for a minimum

1 of 24 hours per week for six consecutive months. Respondent has not worked as a registered
2 nurse for over five years. Prior to accepting any nursing employment, Respondent is required to
3 take a refresher course with clinical in the facility, a refresher course and comprehensive agency
4 orientation, or a new graduation program that is at least three months.

5 PRAYER

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the Board issue a decision:

8 1. Revoking the probation that was granted by the Board Case No. 2003-304
9 and imposing the disciplinary order that was stayed thereby revoking Registered Nursing License
10 No. 528270 issued to Respondent;

11 2. Revoking or suspending Registered Nursing License No. 528270, issued to
12 Respondent;

13 3. Taking such other and further action as deemed necessary and proper.
14

15 DATED: 11/26/09
16


17 
18 RUTH ANN TERRY, M.P.H., R.N.
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2003-304

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARIE GORDON, RN
P.O. Box 60121
Pasadena, CA 91116

Registered Nurse License
Number RN 528270,

Respondent.

Case No.: 2003-304

OAH No.: L2004010157

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective October 22, 2004.

IT IS SO ORDERED September 22, 2004.

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Sandra K. Erickson

rfm

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:)	
)	
MARIE GORDON, RN)	Case No. 2003-304
P.O. Box 60121)	
Pasadena, CA 91116)	OAH Case No. L2004010157
)	
Registered Nurse)	
License Number RN 528270)	
)	
Respondent.)	
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PROPOSED DECISION

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on August 4, 2004.

Linda L. Sun, Deputy Attorney General, represented Ruth Ann Terry, M.P.H., R.N. ("Complainant").

Respondent represented herself.

Complainant seeks to discipline respondent's license on the bases that she suffered a criminal conviction and that she failed to comply with an order to undergo a psychiatric examination. Respondent does not dispute the allegations, but provided explanations for her conduct and submitted other evidence in mitigation and rehabilitation.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity as Executive Officer, Board of Registered Nursing ("Board"), Department of Consumer Affairs, State of California.

2. On December 5, 1996, the Board issued Registered Nurse License number 528270 to respondent. The license expired on April 30, 2004, after respondent failed to pay the renewal fee; she has since forwarded payment to the Board. The license has not been previously disciplined.

3. Respondent has been a nurse or a nurse assistant since 1971. She graduated from the Los Angeles County Medical Center School of Nursing in May 1996.

4. On May 31, 2001, in the Superior Court of California, County of Los Angeles, State of California, in case number VA062429, respondent was convicted, on her plea of guilty, of violating Business and Professions Code¹ section 4060 (possession of a controlled substance without prescription), a misdemeanor.

5. The Court suspended imposition of sentence and placed respondent on probation for three years on terms and conditions that included service of 7 days in jail and payment of \$200 fine. She was directed not to use or possess narcotics or other controlled substances, but was not ordered to submit to random drug testing, to complete drug counseling, or to comply with any other condition related to drug abuse. She received credit for time spent in jail awaiting criminal proceedings and did not have to serve any additional time.

6. The facts and circumstances surrounding the conviction are that respondent used Tylenol with Codeine tablets prescribed for her aunt. She did so with her aunt's permission in order to control the pain associated with a root canal. She was stopped by a police officer after driving erratically and had 3 tablets of the controlled substance in her possession.

7. The conviction is for a crime substantially related to the qualifications, functions, and duties of a registered nurse.

8. On May 8, 2003, Complainant filed a Petition for an Order to Compel Psychiatric Examination ("Petition"), pursuant to section 820. In support of the Petition, complainant cited respondent's conviction, her conduct at her former employer Metropolitan State Hospital ("Metropolitan"), her failure to complete Board-mandated diversion, and her statements to diversion personnel. On July 1, 2003, the Board granted the Petition and issued an Order compelling a psychiatric examination pursuant to section 820.

9. Respondent generally disputed allegations regarding her conduct at Metropolitan and explained her failure to complete the diversion program, but did not challenge the Board's authority to issue the Order compelling the psychiatric examination. With respect to the diversion program, respondent testified she stopped attending Alcoholics Anonymous meetings, a requirement of diversion, because she was troubled by the problems of those present. She had been an occasional drinker and did not believe she had a problem with drugs or alcohol.

¹ All further references are to the Business and Professions Code.

10. On August 7, 2003, Enforcement Program Analyst Cindo Flores ("Flores") informed respondent of the Board's Order and instructed her to contact Stephan Fleisher, Ph.D., for an evaluation. Respondent received the letter but did not contact Dr. Fleisher. Dr. Fleisher left two messages for respondent to contact him to schedule the evaluation, but respondent failed to return the calls. Respondent has not undergone the required mental examination.

11. At the hearing, respondent explained she failed to submit to the examination because of difficulties in her life. Her mother had just died and she was very distraught. Her conviction had made it difficult to obtain work and she had suffered periods of homelessness. She was also seeing a psychiatrist and did not believe another one was necessary; however, respondent did not inform the Board about the psychiatrist or seek to have her psychiatrist perform the examination.

12. Respondent has been receiving case management and psychiatric services at the Pacific Clinics since 1982. Treatment has helped her cope with stress and other problems. Elsa Cruz, M.D., wrote a letter, which was received in evidence, requesting involvement by the clinic in the psychiatric examination process.

13. Respondent is entering a period of relative stability. She has procured housing, which she pays for with public assistance. Her daughter has graduated from nursing school and no longer requires respondent's immediate attention. Respondent realizes that she must comply with the Board's Order for a psychiatric examination and is willing to cooperate.

14. The Board has incurred costs in connection with its investigation and prosecution of this matter, namely, charges from the Attorney General's office in the amount of \$8,949.25 and charges from the Division of Investigation in the amount of \$2,100, or a total of \$11,049.25.

15. Except for those previously addressed in this Decision, all other allegations in the accusation are found to be unproved or surplusage.

LEGAL CONCLUSIONS

1. Grounds exist to suspend or revoke respondent's license pursuant to section 821 in that respondent failed to comply with an Order of the Board, by reason of factual finding numbers 8 through 10.

2. Grounds exist to suspend or revoke respondent's license pursuant to sections 490, 2761, subdivision (f), and 2762, subdivision (c) in that she engaged in unprofessional conduct by suffering a conviction for a crime substantially related to the qualifications, functions, and duties of a registered nurse, by reason of factual finding numbers 4 through 7.

3. Grounds exist to suspend or revoke respondent's license pursuant to sections 2761, subdivision (a), and 2762, subdivision (a) in that she engaged in unprofessional conduct by unlawfully possessing self-administering a controlled substance, by reason of factual finding number 6.

4. All evidence submitted in mitigation and rehabilitation, set forth in factual finding numbers 2, 3, 5, 6, 11, 12, and 13, has been considered. In brief, respondent is no longer on probation. The conviction represents an isolated incident involving use of a controlled substance to control specific pain and not chronic abuse. Respondent failed to comply with the Board's Order because of distress brought about by the death of her mother. The order that follows is necessary and sufficient for the protection of the public.

5. Cause exists pursuant to section 125.3 to order respondent to pay the Board's costs of investigation and adjudication in this matter, by reason of factual finding numbers 1 through 10 and 14, and legal conclusion numbers 1, 2 and 3.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, the board must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the board must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the board must consider a respondent's ability to pay; and the board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. *Id.* at p. 45.

In this case, after giving due consideration to respondent's ability to pay, as evidenced by her lack of employment and present reliance on public assistance, it is concluded that respondent is unable to pay any of the Board's enforcement costs. Accordingly, the reasonableness of the costs was not established.

ORDER

Registered Nurse License number 528270 issued to respondent Marie Gordon is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

1. OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

2. COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

3. REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

4. RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

5. SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

6. FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

7. EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative

methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved. Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- a. Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- b. Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- c. Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- d. Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

9. EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. COMPLETE A NURSING COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

11. VIOLATION OF PROBATION - If a respondent violates the conditions of his/her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. LICENSE SURRENDER - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- a. Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- b. One year for a license surrendered for a mental or physical illness.

13. MENTAL HEALTH EXAMINATION - Respondent shall, within 30 days of the effective date of this decision, submit to an examination to be conducted by a physician specializing in psychiatry or by a psychologist selected by the Board or its designee to determine whether respondent is mentally ill to such extent as to affect her ability to practice nursing safely. In light of legal conclusion number 5, the Board shall pay for the examination.

The examination shall be conducted at a time mutually convenient to respondent and to the examiner selected by the Board. The examination shall continue from day to day until completed, and shall include any and all examinations and tests ordered and/or conducted by the examining psychiatrists or psychologists as considered necessary in their professional judgment. It is strongly recommended that the examiner solicit records and expert opinions from Dr. Cruz and Pacific Clinics, and respondent is ordered to cooperate with any such request for information. The results of the examinations shall be reported by the examiner in a detailed written report setting forth his/her findings and conclusions, which report shall be delivered to the Executive Officer of the Board, with a copy to respondent.


Recommendations for treatment, therapy or counseling made as a result of the mental health examination shall be instituted and followed by the respondent.

Respondent must complete of the mental health examination before returning to the actual practice of nursing. If respondent is determined to be unable to practice safely as a registered nurse, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of non-practice will not apply to the reduction of the probationary time period.

14. COMPLETION OF PROBATION - Upon successful completion of probation, the respondent's license will be fully restored.

SEVERABILITY CLAUSE - Each term and condition of probation contained herein is a separate and distinct term and condition. If any term and condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each term and condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

DATED: 8/9/04


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2003-304

12 MARIE GORDON
P.O. Box 60121
13 Pasadena, CA 91116

A C C U S A T I O N

14 Registered Nursing License No. 528270

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs (Board).

23 2. On or about December 5, 1996, the Board issued Registered Nursing
24 License No. 528270 to Marie Gordon (Respondent). The Registered Nursing License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on April 30,
26 2004, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 states, in pertinent part:

"Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [article 3 (commencing with section 2750)]. As used in this article, 'license' includes certificate, registration, or any other authorization to engage in the practice regulated by this chapter [chapter 6 (commencing with section 2700)]."

5. Section 2764 states:

"The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licentiate shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license."

6. Section 2811, subdivision (b), provides in pertinent part, that each license not renewed in accordance with that section shall expire, but may within a period of eight years thereafter be reinstated.

7. Section 821 states:

"The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license."

8. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct,

....

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the

1 conviction shall be conclusive evidence thereof. . . ."

2 9. Section 2762 states, in pertinent part:

3 "In addition to other acts constituting unprofessional conduct within the meaning
4 of this chapter [chapter 6 (commencing with section 2700)] it is unprofessional conduct for a
5 person licensed under this chapter to do any of the following:

6 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
7 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
8 or administer to another, any controlled substance as defined in Division 10 (commencing with
9 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
10 defined in Section 4022.

11

12 "(c) Be convicted of a criminal offense involving the prescription, consumption,
13 or self-administration of any of the substances described in subdivisions (a) and (b) of this
14 section, or the possession of, or falsification of a record pertaining to, the substances described in
15 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
16 thereof. . . ."

17 10. Section 490 states:

18 "A board may suspend or revoke a license on the ground that the licensee has been
19 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
20 of the business or profession for which the license was issued. A conviction within the meaning
21 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
22 contendere. Any action which a board is permitted to take following the establishment of a
23 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
24 been affirmed on appeal, or when an order granting probation is made suspending the imposition
25 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
26 Penal Code."

27 ///

28 ///

1 11. California Code of Regulations, title 16, section 1444, states, in pertinent
2 part:

3 "A conviction or act shall be considered to be substantially related to the
4 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
5 present or potential unfitness of a registered nurse to practice in a manner consistent with the
6 public health, safety, or welfare. . ."

7 12. Section 125.3, subdivision (a), states, in pertinent part:

8 "Except as otherwise provided by law, in any order issued in resolution of a
9 disciplinary proceeding before any board within the department . . . the board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations
11 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case."

13 DANGEROUS DRUG / CONTROLLED SUBSTANCE

14 13. "Tylenol with Codeine," a combination drug containing codeine phosphate
15 and Acetaminophen, is categorized as a dangerous drug pursuant to Business and Professions
16 Code section 4022, and is a Schedule III controlled substance pursuant to Health and Safety Code
17 section 11056, subdivision (e)(2).

18
19 FIRST CAUSE FOR DISCIPLINE

20 (Failure to Comply with Board Order)

21 14. Respondent is subject to disciplinary action under section 821 in that
22 Respondent failed to comply with an Order of the Board, pursuant to Business and Professions
23 Code section 820. The circumstances are as follows:

24 a. On or about July 1, 2003, Sandra Erickson, C.R.N.A., in her official
25 capacity as the President of the Board of Registered Nursing, Department of Consumer Affairs,
26 filed Order No. 2003-304 for Respondent to submit to a psychiatric examination. A copy of the
27 Order and Petition for An Order to Compel Psychiatric Examination are attached as Exhibit A
28 and incorporated herein by reference.

1 b. On or about August 7, 2003, the Board sent Respondent a letter instructing
2 her to call and schedule an appointment with a specified psychologist. The examination was to
3 be conducted no later than September 15, 2003.

4 c. Respondent failed to schedule an appointment for a psychiatric
5 examination and as of this date has failed to comply with the Board's Order to undergo said
6 psychiatric examination.

7
8 SECOND CAUSE FOR DISCIPLINE

9 (Conviction of a Crime Involving Drugs)

10 15. Respondent is subject to disciplinary action under section 2761,
11 subdivision (a), defined by section 2762, subdivision (c), on the grounds of unprofessional
12 conduct in that on or about May 31, 2001, Respondent was convicted of a crime involving
13 Tylenol with Codeine, a dangerous drug and controlled substance, as follows:

14 a. On or about May 31, 2001, in a criminal proceeding entitled *The People of*
15 *the State of California v. Marie Gordon* in Los Angeles County Superior Court, Southeast
16 Judicial District, Case No. VA062429, Respondent was convicted for violating Business and
17 Professions Code section 4060 (possession of a controlled substance without prescription), a
18 misdemeanor.

19 b. On or about November 9, 2000, a California Highway Patrol officer
20 observed Respondent's vehicle weave from side to side, the vehicle's left turn signal was on and
21 the windshield wiper was activated despite a sunny day. Respondent's vehicle almost collided
22 into another vehicle when the officer instructed Respondent to exit the freeway for suspicion of
23 driving under the influence. Respondent was found to be in possession of a dangerous drug and
24 controlled substance (Tylenol with Codeine) without a prescription, and was arrested.

25 ///

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1 THIRD CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance or Dangerous Drug)

3 16. Respondent is subject to disciplinary action under section 2761,
4 subdivision (a), defined by section 2762, subdivision (a), on the grounds of unprofessional
5 conduct in that on or about November 9, 2000, Respondent was in possession of a dangerous
6 drug and controlled substance without a prescription, as described above in paragraph 15.

7
8 FOURTH CAUSE FOR DISCIPLINE

9 (Conviction of a Substantially Related Crime)

10 17. Respondent is subject to disciplinary action under sections 490 and 2761,
11 subdivision (f), defined by California Code of Regulations, title 16, section 1444, in that
12 Respondent was convicted of a crime substantially related to the qualifications, functions, or
13 duties of a registered nurse, as described above in paragraphs 15 and 16.

14
15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein
17 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nursing License No. 528270, issued to
19 Marie Gordon;

20 2. Ordering Marie Gordon to pay the Board of Registered Nursing the
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 12/1/03


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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